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NOTES AND SUGGESTIONS

CURRENT LAWFUL MONEY OF NEW ENGLAND

THE term "Current Lawful Money of New England" is frequently found in laws, bonds, inventories, and accounts, written either in full or in such abbreviated forms as "Lawful Money" and "L. M.", and its meaning is clearly not the same in all cases. Before attempting to find out what it meant in New England we shall need to review briefly the currency situation in the colonies.

With the exception of Massachusetts, the colonies had no coins of their own and were dependent for specie or hard money on foreign gold and silver. As trade expanded and the number of these coins increased, the colonists were obliged to decide, in terms of English money, the rate at which such coins should circulate. At first the crown authorized the colonial governors to fix the rate by local proclamation, but as silver was always scarce, partly because of the comparatively small amount in circulation and partly because colonial merchants found it more profitable to pay their British debt balances in that medium, some of the colonies abused the privilege by attempting to regulate the value of foreign coins in such a way as to draw hard money from other colonies into their own. This they did by offering to accept pieces of eight, Spanish dollars, and other coins at rates higher than those established by their neighbors.

Complaints inevitably arose. In 1702 Governor Blakiston of Maryland sent to England a protest against the Pennsylvania money act of 1700, which so raised the value of a dollar that a coin of standard weight—seventeen and a half pennyweight—would pass for nearly eight shillings, a valuation which probably had been current in the colony for some time. In view of this money rivalry and its injury to colonial trade, the authorities in England decided to withdraw the privilege of determining rates by local proclamation, and to create a single standard by fiat of the crown.

The matter was brought before the Board of Trade in 1703, and many persons familiar with colonial affairs were called in for information and advice. When it was found that Massachusetts by her act of 1697—an act that had been confirmed by the crown and could not be altered, as was not the case with the Pennsylvania act

of 1700—had fixed the value of the Spanish dollar at six shillings,¹ the Board agreed to recommend that this rate be extended to all the colonies. Consequently, by the proclamation of 1704, the Spanish dollar (and other coins in proportion) was made current in the colonies at six shillings by tale (or six shillings and eightpence an ounce by weight, though this fact is not stated in the proclamation), a valuation which represented a depreciation of thirty-three and a third per cent. from that of the same coin in England, where the sterling value was four shillings and sixpence to the dollar and five shillings and twopence to the ounce. Hence arose “proclamation money”, which was foreign silver and foreign silver only. The failure of the colonists in the next few years to obey the proclamation led to the passage by Parliament of the coinage act of 1708, which fixed the same rate by statute.

But as the colonies continued to suffer from a scarcity of hard money and in certain cases endeavored to better their condition by making advantageous offers for the silver that they wanted, there came into existence the various forms of “colonial currency”, which was not money at all, but only a method of reckoning values, a statement of the amount in shillings at which a Spanish dollar would be accepted in a given colony. These amounts ran from eight shillings in New York and North Carolina to seven shillings and sixpence in New Jersey, Pennsylvania, Delaware, and Maryland, and to six shillings, or the proclamation rate, in New England and Virginia. These amounts varied at different times and were always liable to alteration, but before 1750 they had become fairly stable, and the nearer they approached the proclamation rate, which was the legal standard, the higher their repute.

Thus the colonies in the eighteenth century had to reckon with three valuations of foreign coins in all their business transactions: *sterling*, with silver at five shillings or more accurately five shillings and twopence an ounce² and four shillings and sixpence to the dol-

¹ This rate was based on the actual value of the pine-tree shilling, which was ninepence sterling. In thus depreciating the value of her coinage, Massachusetts evidently desired to prevent the coins from leaving the colony. The rating of a full-weight Spanish dollar at six pine-tree shillings, or four and sixpence sterling, was adopted by Massachusetts as early as 1672 and by Connecticut a few years later.

² Five shillings and twopence was the British government standard for an ounce of silver, and was nearly twopence better than the Spanish standard. The price of silver was always fluctuating in the London market, partly because of scarcity, as when the government cornered the supply, and partly because of the demands of the manufacturers of plate. At times the price rose as high as nearly six shillings. The price in the colonies rose to more than sixty shillings in paper before 1750.

lar; *proclamation money*, in which an ounce of silver was valued at six shillings and eightpence or more accurately six shillings tenpence and a half and a dollar at six shillings; and *currency* or reckoning money, which rated an ounce of silver from seven to eight shillings and a dollar from six to eight shillings. When making payments in England by means of bills of exchange, it was always necessary to add to the sterling rate the difference of exchange, which varied from year to year and from month to month, running from twenty-five to sixty per cent. in Virginia and from thirty-three and a third to eighty per cent. and more in New York. By the act of 1750 in Massachusetts, the exchange was fixed at $133\frac{1}{3}$ local currency to 100 sterling, which was the proclamation rate. Virginia's normal rate of 125 to 100 was better than proclamation, while that of South Carolina, which was sometimes more than 700 to 100, was the worst in the colonies.

The scarcity of coin for purposes of government and trade and for meeting certain unusual expenditures, generally of a military nature, led to the issue of paper money or bills of credit. Depreciation followed sooner or later, as the issues grew larger and funding conditions and periods of redemption became less satisfactory, until before the middle of the century in New England the bills were at eleven to one in Massachusetts, twenty to one in New Hampshire, twenty-three to one in Rhode Island, and nine to one in Connecticut. The situation became so serious that in 1750 Massachusetts, taking advantage of the receipt of a large amount of silver and copper coin from England, appropriated by Parliament to recompense the colony for the share which it had taken in the Louisburg expedition, returned to a specie basis and forbade the circulation in the colony of the bills of her neighbors, which had hitherto passed promiscuously and without discount throughout New England.

Now "lawful money" had to be one or other of these varieties, either sterling, proclamation, currency, or paper. Sterling it could not be, for no statute had made sterling a lawful medium for all America, but proclamation it clearly was, for that had been made the legal tender of the colonies by the act of 1708. At the same time both currency and paper were based upon law, the law of the colonies, and it is quite possible that when the term "lawful money" is used in New England, the reference is to either currency or paper. Light upon the matter is thrown by a case, that of *Dering versus Packer*, which was carried on appeal to England in 1760 and, like the famous *McSparran* case in Rhode Island which turned on the meaning of the word "orthodox", depended for decision on what was meant by the phrase "current lawful money of New England".

In 1734 Thomas Packer of Portsmouth, sheriff of New Hampshire, became indebted to his brother-in-law Henry Dering, a merchant of Boston, in the sum of £2460, "current lawful money of New England or good public bills of credit of Massachusetts", as stated in the bond drawn up on January 30, 1735. Some payments were made, but in 1750, when Dering died, Packer still owed £2123. Thomas Dering, Henry's son, was made executor of the estate and when Packer tendered in payment "a parcel of bills", containing £2000 of New Hampshire, old tenor, and £200 of Connecticut, old tenor, he refused to receive them, unless allowance were made for depreciation. Packer declined to pay in any other medium and Dering sued him in the New Hampshire inferior court of common pleas. The jury found for Dering to the full value of the bond—principal, interest, and double penalty—amounting to £4920 or £3690 sterling. Packer moved to be heard by the court sitting in equity and won his case. Dering carried his suit to the superior court and again got a favorable verdict, but when Packer again obtained a review in chancery the former equity judgment was sustained. Dering then appealed to England.

The point at issue was this. Dering claimed that the debt should be paid either in Massachusetts bills of credit, which after 1750 were as good as specie, and so worth more than those of any of the other New England colonies, or in silver, that is, Massachusetts pine-tree shillings, which were still in circulation, or foreign silver at proclamation rates. Packer, on the other hand, claimed that the debt could be paid in what was commonly understood to be lawful money in 1735, bills of credit of any of the New England colonies, which were at that time interchangeable without discount. Old tenor bills of New Hampshire and Connecticut were not legal tender in private transactions and could not be made so, since that would be contrary to a law of England, the act of 1708, but they were lawful money when passed by agreement or when specially provided for in the contract. Packer did not deny that these bills had greatly depreciated, but he rested his case upon a strict interpretation of the letter of the bond. Should Dering win on appeal, he would obtain the full value of the bond with penalty; but should he lose he would have to accept depreciated paper, which according to his own calculation would amount to £790 instead of £3690 sterling, or about one-fifth of the value of the debt.³

The decision of the Privy Council is both interesting and important. It reversed the equity judgment of the superior court of

³ The briefs in the case are in the British Museum, Add. MSS. 36218, ff. 44-48. Transcripts are in the Library of Congress.

New Hampshire and ordered Packer to pay the debt in silver, at the rate of thirty-seven shillings, old tenor, to an ounce, including principal, interest to the time of payment, and costs.⁴ It thus declared that the only "lawful money" in New England was silver. When the decision became known in New England it aroused considerable dissent. Jared Ingersoll, in commenting on the case,⁵ said, "Perhaps they were mistaken in that matter, not being acquainted with the currency and understanding of the people in New England and the defendant not well prepared to shew that matter".

What Ingersoll meant was that "lawful money" in New England, according to the customary use of the term, was paper, but whether paper at par, paper as it was valued when the debt was incurred, or paper as valued when the bond was given, he does not say. On this problem Dr. Ezra Stiles in his *Itineraries* throws light which may be deemed for the moment conclusive. He gives several illustrations of the corresponding values of sterling, proclamation, and lawful money, and makes it clear that the last named in New England was anything, whether silver or paper, which passed at the proclamation rate, that is, six shillings to the dollar. The old tenor bills of Connecticut and Rhode Island bore on their face the phrase "of Value equal to Money", that is, specie,⁶ and these bills are probably what Ingersoll had in mind. We may conclude, therefore, that "current lawful money of New England" might be either Massachusetts shillings, foreign silver at proclamation rates, or bills of credit at their face value, but that the latter was the commonly accepted meaning of the term among the New England colonists.

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⁴ *Acts of the Privy Council, Colonial*, vol. IV., § 407.

⁵ "Notes of Decision of Case, Dering vs. Packer", is among the Ingersoll Papers in the possession of the New Haven Colony Historical Society, and is printed with other selections from these papers, edited by Professor Dexter, in volume IX. of the publications of that society, pp. 239-242. Ingersoll's comment is on page 240.

⁶ When the term "money" or "real money" was used it always meant silver or gold, though very little gold was actually in circulation in New England. The chief hard money there was silver and copper.